

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELODY S. WESSON and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Birmingham, AL

*Docket No. 00-1106; Submitted on the Record;
Issued February 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability, due to her July 30, 1997 employment injury, beginning July 5, 1999.

The Board has duly reviewed the case record and finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability, due to her July 30, 1997 employment injury, beginning July 5, 1999.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.²

As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.⁵

The Office accepted appellant's claim for a lumbosacral strain and right trochanteric bursitis. On August 6, 1999 appellant filed a recurrence of disability, alleging that on July 5, 1999 she bent at the waist to pick up laundry off the floor and felt muscle spasms. Appellant stated that her original injury had never gone away, that she had been working light duty and when she stopped taking muscle relaxants, her muscle spasms intensified. Appellant missed work from July 6 to 12, 1999.

By letter dated August 20, 1999, the Office informed appellant that more information was necessary to establish her claim, including a narrative report from her treating physician with a supporting explanation as to the causal relationship between her current back condition and the July 30, 1997 employment injury.

Appellant submitted two reports from her treating physician, Dr. E. Lamar Thomas, a Board-certified orthopedic surgeon. In his July 6, 1999 report, Dr. Thomas noted that appellant bent over to pick something up on Sunday and reinjured her back. He described her symptoms, performed a physical examination, and reviewed x-rays. Dr. Thomas diagnosed sclerosis in the lamina of L5 and S1, low back pain, and spondylolisthesis or possible spondylolysis. He prescribed physical therapy. Dr. Thomas, however, did not address the cause of appellant's back condition. Therefore, his report is not probative on whether the diagnosed sclerosis was causally related to the accepted work injury in July 1997.

In his September 15, 1999 report, Dr. Thomas stated that he had not seen appellant since July 1999. He stated that he did not know what her current back condition was. Dr. Thomas stated: "If you want to call it, I would call it a causal relationship because she had previous back problems. So, anytime she has a reinjury; they are all interrelated, I would believe." Dr. Thomas' September 15, 1999 report is insufficient to establish the requisite causal connection because he did not relate appellant's condition to her employment. Nor did he provide a rationalized medical explanation of how the July 1997 incident related to the July 30, 1997 employment injury, a lumbosacral strain.⁶ Further, Dr. Thomas' report provided no objective medical evidence explaining how the 1997 back strain could still be causing residual symptoms. Finally, appellant's belief that her current back condition is causally related to the 1997 strain because the pain has never gone away is insufficient to establish the requisite causal relationship.⁷ Although the Office informed appellant of the evidence necessary to establish her

⁴ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁵ See *William S. Wright*, 45 ECAB 498, 503 (1994).

⁶ See *Bernard Snowden*, 49 ECAB 144, 148 (1997); see also *Barbara J. Williams*, 40 ECAB 549 (1989) (medical reports that failed to address the issue of recurrence of disability causally related to the initial work injury found to be irrelevant).

⁷ See *Calvin E. King*, 51 ECAB ____ (Docket No. 98-922, issued March 24, 2000) (compensation for disability may not be awarded based on appellant's belief that there is a causal relationship between his condition and his employment).

claim, she was not responsive to the request. She therefore has failed to establish that her current back condition constitutes a recurrence of disability.

The October 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member